

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

**IN THE MATTER OF: CHILD
SUPPORT ENFORCEMENT SYSTEM
AND FAMILY COURT CASE
MANAGEMENT SYSTEM
CONTROVERSY, SOLICITATION
NO. 07-S7279**

**SOUTH CAROLINA DEPARTMENT OF
SOCIAL SERVICES AND SOUTH
CAROLINA JUDICIAL DEPARTMENT**

vs.

**HEWLETT-PACKARD
CORPORATION AND HEWLETT-
PACKARD STATE
AND LOCAL ENTERPRISE SERVICES,
INC.**

**BEFORE THE
CHIEF PROCUREMENT OFFICER**

CASE NO. 2013-204A

**REVIEW PROCEDURES
AND
REVISED SCHEDULING
CONSENT ORDER**

POSTING DATE: 8/13/2013

This matter is before the Acting Chief Procurement Officer for Information Technology ("CPO") pursuant to a request from the South Carolina Department of Social Services, the South Carolina Judicial Department, and the County Clerks of Court (collectively "the Agencies") under the provisions of Code Section 11-35-4230 for resolution of a contract controversy with Hewlett-Packard Corporation and its subsidiary Hewlett-Packard State and Local Enterprise Services, Inc. (collectively "HP"), regarding a contract for development of child support enforcement and family court case management software.

On April 12, 2013, the CPO issued a Scheduling Order. On June 3, 2013, the CPO issued an Amended Scheduling Order. Extensions and agreements were subsequently approved on June 13th and June 28th. Interim modifications were made on August 7, 2013.

On July 12, 2013, HP filed an Emergency Motion for Continuance and an Emergency Motion to Stay All Deadlines. On July 22, 2013, the CPO issued an order continuing the hearing scheduled for July 31, 2013, and staying the Amended Scheduling Order (including all approved extensions and modifications) pending issuance of a revised scheduling order.

The CPO issues this Review Procedures and Revised Scheduling Consent Order after consultation with both parties. This Order modifies, and to the extent of any conflict, supersedes, the referenced prior orders and agreements. Nothing herein prevents either party from seeking an extension for good cause shown.

Pending Motions

A hearing was held on Monday August 12, 2013, commencing at 10:00 A.M., to address HP's Rule 12(H)(3) Motion to Dismiss, filed on July 12, 2013, and the Agencies' Emergency Motion for Injunctive Relief, filed on July 29, 2013. Regarding the Agencies' Emergency Motion for Injunctive Relief, the parties have until August 16, 2013 to file and serve any supplemental materials for the CPO's consideration.

All remaining motions pending as of July 31, 2013, are withdrawn without prejudice to any right to reassert them at a future date.

Hearings

All hearings will be conducted at the Capitol Center, 1201 Main Street, Suite 600, Columbia, S.C. 29201.

A hearing on any motions filed on or before October 4, 2013 will be held on Tuesday, October 15, 2013 commencing at 10:00 A.M.

A hearing on the merits of this matter will commence at 10:00 A.M., October 21, 2013 and, except for weekends and South Carolina state holidays (<http://www.ohr.sc.gov/OHR/applicant/OHR-holidays.phtm>), the hearing will continue from day to day until concluded unless otherwise ordered by the CPO. Each following day the hearing will commence at 9:00 A.M. and suspend at 4:00P.M. Upon request, counsel may be provided one business day to prepare closing arguments.

Administrative

1. **Court Rules** - While the South Carolina Rules of Civil Procedure and Rules of Evidence have no direct application to the process established by Section 11-35-4230, they often provide a useful procedural framework. While not binding, citation to the Rules is often persuasive.
2. **Method of Service & Filing** - For all matters related to the CPO's review, service on the opposing party and filing with the CPO shall be by electronic mail only and shall be complete upon receipt. Items filed with the CPO should be submitted electronically to the CPO's assistant and the CPO's legal counsel. Items served on another party should be served on that party's lead counsel.
3. **Computing Time** - Unless otherwise specified, time is to be computed in accordance with §11-35-310(13). All time periods shall end at 5:00PM Eastern Time.
4. **Legal Authority** - Citation to authority is essential. All citations to case law should include citation to South Carolina court authority, unless no such authority exists. Multiple or string citations are generally not helpful. Please provide a parenthetical explaining why each case is cited, and please provide a copy of each case not printed in the West reporter system.
5. **Testimony** - All testimony will be taken under oath.

Scheduling

1. **Pleadings** - Section 11-35-4230(2) provides that resolution proceedings may be initiated "by submitting a request for resolution ... setting forth the specific nature of the controversy and the specific relief requested with enough particularity to give notice of every issue to be decided."¹ The statute does not expressly require an initial or responsive pleading; nevertheless, due process requires that all parties to this proceeding have notice of the issues to be decided. Accordingly, the issues will be limited to those raised by the pleadings received to date and any amendments allowed by the CPO. Either party may submit amended pleadings, which must be clearly designated as an Amended Request for Resolution, or a response or reply to the same. Any additional or amended claims must be filed by August 9, 2013. Any response to the additional or amended claims must be filed by August 16, 2013. Any further reply must be filed by August 23, 2013. The following are the pleadings received to date:

- a. Agencies' Complaint - Incidents: October 15, 2012 Letter to M. Spicer from M. Manos (Incidents)
- b. Agencies' Complaint - Material Breach: October 15, 2012 Letter to M. Spicer from M. Manos (Material Breach)
- c. Response & Counterclaim by HP: November 9, 2012 Letters (responding separately to the Incidents and Material Breach Complaints) to M. Spicer from K. Taylor
- d. Agencies' Reply to Counterclaim: November 12, 2012 Letter to M. Spicer from M. Manos.

2. **Prior Agreement** - This order incorporates the parties' prior agreement regarding the proposed exhibits, as memorialized in the letter of June 24, 2013 from Mr. Manos to Mr. White, except to the extent inconsistent with this order.

3. **Record and Objections Submitted to the Present** - The Record submitted on July 3, 2013 and the objections reflected therein will be disregarded and excluded from the CPO's official record.

4. **Additional and Withdrawn Exhibits** - By September 6, 2013, each party will serve the other party with copies of any additional exhibits they propose to offer together with a list of any they propose to withdraw from those previously identified. Unless the use of the exhibit would be solely for impeachment, an exhibit not previously exchanged by the parties may not be admitted.

¹ This language was modified in 2006 (2006 Act No. 376) and has not been meaningfully interpreted by any published opinion. In contrast, section 11-35-4210(2)(a)&(b) provides that the protest set forth "the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided." This portion of Section 11-35-4210 has been generously interpreted by the Procurement Review Panel on many occasions. Presumably, Section 11-35-4230 requires no more than a statement of the facts sufficient to satisfy due process.

5. Objections to Exhibits - On September 20, 2013, the parties shall re-exchange objections to exhibits, as provided in the Amended Scheduling Order. Should there be a disagreement regarding the admissibility of an exhibit, that exhibit should be clearly marked in the Record submitted to the CPO on the below date by a notation in the Revised Index (objections by [Party Name]). On the same date, each party should file and serve an Objection Summary that concisely identifies the basis of the objection to each exhibit and provides a brief explanation of the legal basis for the objection, including appropriate legal citation. An objection which should have been known to the party, but was not properly stated and supported by authority in the Revised Index and the Objection Summary may result in waiver of the objection.

6. Proposed Exhibits - By September 27, 2013, the parties will consult with one another again in order to provide the CPO with two copies of a revised and complete set of proposed exhibits, consisting of documents and other materials necessary for a thorough understanding of the claims and defenses. The Agencies will be responsible for compiling the proposed exhibits and providing them to the CPO and the opposing party. (The Agencies should begin with the two sets already submitted, which are available upon request). Each group of documents should be organized chronologically, beginning with the oldest document first. Contents are as provided in the Amended Scheduling Order. The Proposed Exhibits shall be placed on read only DVD or CD-ROM in the order specified above. All documents shall be searchable .PDF format except for those that do not readily convert which shall be included in native format, also searchable if possible. The documents shall not be locked to prevent printing or copying. The Proposed Exhibits shall have consecutive page numbers from beginning to end. The record shall be provided to the CPO and HP on or before October 4, 2013.

7. Expert Reports

- a. Each party will serve expert reports on the issues on which the submitting party has the burden of proof on or before August 30, 2013. Each party will also affirm or withdraw their earlier submitted expert reports by August 30, 2013.
- b. By September 27, 2013, each party will serve any expert report responsive to a report served or affirmed on August 30, 2013
- c. By October 2, 2013, each party will serve any reply expert report(s).

8. Pre-Trial Briefs - Amended Pre-Trial Briefs will include all the information requested in paragraph 7 of the Amended Scheduling Order. By October 4, 2013, each party will file and serve its opening Amended Pre-Trial Brief. By October 11, 2013, each party will file and serve its responsive Pre-Trial Brief.

9. Motions and Reply - All pre-hearing motions and supporting memoranda must be filed and served by October 4, 2013. Any opposition to a motion must be filed and served by October 11, 2013. The parties are encouraged to submit motions in limine for advance guidance or rulings. Replies to oppositions are discouraged, if a party feels it must file and serve a reply it must be done by October 14, 2013.

10. **Witnesses** - Each party will file and serve a witness list by September 30, 2013. Excepting reply and rebuttal witnesses, any person not on the witness list will not be allowed to testify without approval by the CPO on motion and with exceptional justification.

11. **Stipulations** - By October 14, 2013, the parties agree to consult with one another and to provide the CPO with stipulations regarding facts not in controversy.

12. **Court Reporter** - The parties have agreed to stenographically record the proceedings and prepare a transcript; to share in the cost of a court reporter; to provide an electronic copy of the transcript to the CPO; and, to provide the original certified transcript to the Procurement Review Panel.

13. **Proposed Orders** - Within thirty days after receiving the complete hearing transcript from the court reporter, each party will serve and file a proposed order. A party shall serve any objection to a proposed order within fifteen days after receipt.

14. **Notice of Final Order** - Section 11-35-4230(4) requires the CPO to "conduct an administrative review and issue a decision in writing within ten days of completion of the review." According to Section 11-35-4230(5), the final order issued pursuant to Section 11-35-4230(4) must be "furnished immediately to all parties participating in the administrative review proceedings" and must be posted "at a time and place communicated to all parties participating in the administrative review. ..." After the hearing has concluded, the parties have filed their proposed orders and objections thereto, and the CPO has completed his administrative review, the CPO will communicate to all parties the time and place for posting of the order. The Order will be posted accordingly and furnished directly only by electronic mail directed to each party's lead counsel.


John St. C. White
Chief Procurement Officer

Columbia, South Carolina

WE CONSENT TO ALL ASPECTS OF THIS ORDER EXCLUDING THE DATES:

Nexsen Pruet, LLC

By 

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Columbia, SC 29201

Attorneys for the Department of Social Services,
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WE CONSENT:

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Attorneys for Hewlett-Packard Company and
Hewlett Packard State and Local Enterprise Services, Inc.

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